

**Letter of Findings: 01-20160038
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was not required to file 2011 Indiana individual income tax return because she was not an Indiana resident and she did not have income derived from Indiana during that year.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#); IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayer is an individual with a current Indiana address. Taxpayer did not file her Indiana income tax return for the tax year 2011. The Indiana Department of Revenue ("Department") determined that for the tax year 2011, Taxpayer was an Indiana resident, that Taxpayer failed to file her Indiana income tax return, and that Indiana income tax was due for 2011.

Taxpayer timely protested the assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment for the tax year 2011. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department determined that Taxpayer was an Indiana resident, that she failed to file her 2011 Indiana income tax return, and that Indiana income tax was due for 2011. Taxpayer, to the contrary, claimed that she was not required to file her 2011 Indiana income tax return and did not owe any Indiana income tax because she was not an Indiana resident and did not have income derived from Indiana in 2011. The issue is whether, for the year 2011, Taxpayer was an Indiana resident.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted

gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state. . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Additionally, [45 IAC 3.1-1-22](#) states:

For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

[45 IAC 3.1-1-23](#) further outlines various special circumstances in considering residency for state income tax purposes. Specifically, [45 IAC 3.1-1-23](#)(1) provides, in relevant part, that

Taxpayer Moving to Indiana

When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.

In this instance, Taxpayer stated that she moved to Indiana late 2011 after her Indiana employer ("Employer") offered her a position beginning January 3, 2012. Taxpayer asserted that she was not born nor was she raised in Indiana. Prior to 2011, she only visited Indiana to interview for jobs and to purchase her current Indiana residence after she accepted Employer's offer.

To support her protest, in addition to copies of signed Settlement Statement and closing documents concerning her current Indiana residence, Taxpayer further provided a copy of Employment Agreement signed between Taxpayer and Employer, employment confirmation, and employee identification. Taxpayer further offered various supporting documents to demonstrate that she resided and worked in a state other than Indiana during 2011. Those documents include her 2011 state income tax return which was timely filed with the state other than Indiana, her driver's license (issued by the state other than Indiana) during 2011, her bank statement, and the payment receipt of property tax on her residence outside Indiana.

Upon review, Taxpayer's documentation demonstrates that she was not an Indiana resident and did not have

income derived from Indiana during 2011 because Taxpayer was not an Indiana domiciliary and spent less than 183 days in Indiana. In short, Taxpayer has met her burden to show that the Department's proposed assessment is not correct.

FINDING

Taxpayer's protest is sustained.

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